THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION No.8713 OF 2005

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ORAL ORDER:

This writ petition is filed seeking a declaration that the proceedings of the 2nd respondent-Assistant Deputy Director of Fisheries, Machilipatnam dated 22.02.2005, as arbitrary and illegal.

The petitioner is a Fishermen Co-operative Society, registered under the provisions of the A.P. Co-operative Societies Act, 1964. It is stated that earlier respondent No.3 herein, filed W.P.No.24969 of 2004 seeking to admit him as member of the petitioner-society. The said writ petition was disposed of, by order dated 31.12.2004 directing the respondents to consider the feasibility of the petitioner being admitted to the society in accordance with the Rules and Regulations. In pursuance thereof, the 2nd respondent vide proceedings dated 22.02.2005 admitted respondents 3 to 19 herein, as members and directed the petitioner-society to collect the share capital together with admission fees and thrift deposit from them. Aggrieved by the said order, the present writ petition is filed contending *inter alia,* that the 2nd respondent had misread the directions of this Court in W.P.No.24969 of 2004; and passed the impugned order mechanically even without conducting the skill test to respondents 3 to 19. Petitioner relied upon the circular dated 16.10.1998 issued by the Director of Fisheries, A.P. Hyderabad, under which a three-member committee was constituted for conducting skill test in order to overcome the problem of unskilled and bogus fishermen being admitted as members of the society in support of the contention that such test is essential before granting membership. It is also contended that the 2nd respondent is not competent to direct the admission of a third party as a member without consent of the society. Hence this writ petition.

Assistant Director of Fisheries- 2nd respondent herein, filed counter-affidavit stating that as per the directions of this Court in W.P.No.24969 of 2004, respondents 3 to 19 were admitted as members in the existing vacancies. It is also stated that as a matter of fact by notice dated 25.06.2004 petitioner-society was called upon to participate in

the enquiry, but there was no response. Subsequently, a notice dated 5.07.2004 was issued directing petitioner-society to conduct general body meeting on 11.07.2004 for enquiring into the complaints made against the petitioner-society. Again by registered notices dated 13.07.2004 and 19.08.2004, the petitioner-society was called upon to attend before the 2nd respondent along with the records of the society. Since the petitioner-society failed to respond to the notices issued by the department, vide memo dated 18.08.2004 issued by the Deputy Director of Fisheries, Machalipatnam, Fisheries Development Officer, Bantumilli was appointed as Special Officer to enquire into the complaints against the management of the petitioner-society. So far as the allegation of the petitioner that no skill test was conducted on 9.10.2004, it is stated that according to the norms prescribed under the circular dated 16.10.1998, Assistant Inspector of Fisheries, Challapalli conducted skill test and submitted his report. Thus, the procedure prescribed under the A.P. Co-operative Societies Act, 1964 and the bye-laws of the Society have been scrupulously followed. It is further stated that skill test was conducted on 9.10.2004 by duly publishing a notice by way of Tom-Tom on 1.10.2004 and 7.10.2004 in the village, and therefore, the allegations made by the petitioner-society are without any basis.

Respondents 3 to 19 also filed a separate counter-affidavit on the same lines.

I have heard the learned counsel for both the parties and perused the material on record.

W.P.No.24969 of 2004 was filed earlier seeking a declaration that the action of the respondents in not granting admission to the petitioner therein, as member of the society, in spite of the report dated 13.10.2004 submitted by the Assistant Inspector of Fisheries, Challapalli, as arbitrary and illegal. This Court disposed of the writ petition with a direction to the respondents to consider the feasibility of the petitioner being admitted to the society in accordance with the rules and regulations. Though the learned counsel for the petitioner contends that no skill test was conducted, the report of the Assistant Deputy Director of Fisheries dated 13.10.2004 shows that skill test was conducted on 9.10.2004. Be that as it may, the question that arises for consideration is - whether the directions issued by the 2nd respondent-Assistant Deputy Director of Fisheries to the petitioner-society to admit respondents 3 to 19 as members of the society is in accordance with the statutory provisions.

Section 19 of the A.P. Co-operative Societies Act, 1964 (for short "the Act") provides for eligibility for membership of a society registered under the Act. Sub-section (2-A) thereof, specifies that any person duly qualified for admission as a member under the provisions of the Act may apply through the Registrar in such form as may be prescribed, and such person shall be deemed to have been admitted as a member of the society from the date of receipt of the application in the office of the society. Rule 12-A of the A.P. Co-operative Societies Rules, 1964 (for short "the Rules") prescribes that any person duly qualified for admission as a member under sub-section (2-A) of Section 19 of the Act, has to apply for membership in Form-J. It is not in dispute that the said provision applies to Fishermen Co-operative Societies. A perusal of Form-J makes it clear that the application for membership has to be addressed to the society through the Registrar of the Co-operative Society. When once such an application is received in the office of the society, it is open to the general body of the society either to grant or refuse admission to the applicant. However, membership shall not be refused without sufficient cause, and where admission is refused, decision with reasons thereof, shall be communicated by registered post to such person within 15 days of the date of decision or within sixty days from the date of application for membership, whichever is earlier.

In the light of the above provision, it is clear that discretion has been conferred on the general body of the society either to grant or refuse membership. However, refusal if any, shall be for sufficient cause and for reasons to be recorded in writing. It is not in dispute that the 2nd respondent is the functional Registrar. This Court while disposing of W.P.No.24969 of 2004 directed the 2nd respondent to consider the request of the petitioner therein for grant of membership following the Rules and Regulations made thereunder. In the circumstances, the 2nd respondent is required to take necessary steps following the procedure prescribed under Section 19 (2-A) and (3) of the Act, read with Rule 12-A of the Rules.

A perusal of the impugned proceedings dated 22.02.2005 itself shows that such a procedure has not been followed by the 2nd respondent, but the persons specified therein were admitted as members of the society in place of deceased members and the President of the society was directed to collect the share capital together with admission fees.

The 2nd respondent while considering the applications of respondents 3 to 19

for membership in pursuance of the directions of this Court ought to have forwarded the same to the petitioner-society, in which event, the general body of the society would consider the issue with regard to the request of the respondents 3 to 19 as members of the society. In case the general body of the society finds that respondents 3 to 19 are not qualified on any ground whatsoever, the same shall be communicated by registered post to the said persons within 15 days of date of decision.

From the counter-affidavit filed by the 2nd respondent, it appears that in spite of repeated notices, the President of the society failed to produce the record and failed to attend the enquiry initiated. If that be so, it is always open to the 2nd respondent to initiate appropriate proceedings against the President and other members of the managing committee of the society in accordance with law. However, on that aground the 2nd respondent cannot grant membership to the respondents 3 to 19 on his own. The said action of the 2nd respondent being contrary to the procedure prescribed under Section 19(2-A) of the Act, is illegal and unsustainable.

Accordingly, the impugned order is set aside and the writ petition is disposed of granting liberty to the 2nd respondent to take steps afresh in terms of the order of this Court in W.P.No.24969 of 2004 and to complete the process as expeditiously as possible in accordance with law, preferably within a period of four weeks from the date of receipt of this order.

The writ petition is accordingly disposed of. No costs.

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(G. ROHINI, J.)

2nd March, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION No.8713 OF 2005

2nd March, 2006.

Between:

The Nidumolu Fisherman co-operative Society,

Regd. NO.#-47, represented by its President,

Eede Hanumantha Rao. .. Petitioner.

And

The Deputy Director of Fisheries, Ex-Officio

Joint Registrar, Fishermen Co-operative Societies,

Krishna District at Machilipatnam and 19 others. .. Respondents.